



San Bernardino County  
Flood Control District

F A S

**STANDARD CONTRACT**

**FOR COUNTY USE ONLY**

<input type="checkbox"/> New <input type="checkbox"/> Change <input type="checkbox"/> Cancel	Vendor Code	SC	Dept.	A	Contract Number	
County Department County Counsel			Dept.	Orgn.	Contractor's License No.	
County Department Contract Representative Alan K. Marks			Telephone 909-387-5459		Total Contract Amount Not to exceed \$200,000.00	
Contract Type <input type="checkbox"/> Revenue <input type="checkbox"/> Encumbered <input type="checkbox"/> Unencumbered <input type="checkbox"/> Other:						
If not encumbered or revenue contract type, provide reason:						
Commodity Code		Contract Start Date		Contract End Date		Original Amount
Amendment Amount						
Fund AA	Dept. FAD	Organization FAD	Appr. 200	Obj/Rev Source 2445	GRC/PROJ/JOB No.	Amount
Fund RFA	Dept. 091	Organization 091	Appr. 200	Obj/Rev Source 2445	GRC/PROJ/JOB No. 09-F01698	Amount
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.	Amount
Project Name			Estimated Payment Total by Fiscal Year			
			FY	Amount	I/D	

THIS CONTRACT is entered into in the State of California by and between the San Bernardino County Flood Control District, hereinafter called the District, and

Name

Brown Winfield & Canzoneri

Address

300 South Grand Avenue

Los Angeles, CA 90071-3125

Telephone

213-687-7888

Federal ID No. or Social Security No.

hereinafter called Attorneys

**IT IS HEREBY AGREED AS FOLLOWS:**

(Use space below and additional bond sheets. Set forth service to be rendered, amount to be paid, manner of payment, time for performance or completion, determination of satisfactory performance and cause for termination, other terms and conditions, and attach plans, specifications, and addenda, if any.)

WHEREAS, District has determined that it is in the best interest of District to retain Attorneys to advise and represent the District on various matters arising out of a quiet title/declaratory relief action entitled The Colonies Partners, et al v. San Bernardino Flood Control District, et al, case no. RCV061971, including but not limited to analysis of the litigation, settlement, appeal and representation in subsequent actions as requested; and

WHEREAS, Attorneys have special skills, knowledge, experience and expertise in the area of real estate and appellate law necessary to effectively to advise and represent the District on such matters.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties hereto agree as follows:

1. **Representation of District.** District hereby retains the services of Attorneys as an independent contractor to represent the District and its officers and employees in the matters referred to above in the first WHEREAS Clause,

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and to provide such other advice, services and representation on related matters as may be assigned by the District's in house counsel, the San Bernardino County Counsel.

2. **Performance of Services and Hourly Rates** It is agreed that Attorneys shall only assign persons to perform services under this Agreement who are approved by the District for performing the services for the District and that when feasible Attorneys will use lower compensated employees in order to reduce the costs of services to District. Thomas F. Winfield shall be lead attorney and supervise all work under this Agreement. The parties agree that the hourly rate for each of the above attorneys and other attorneys who shall be approved to work under this Agreement shall be as listed on the Attorneys' attached Standard Hourly Billing Rates, Exhibit "A".
3. **Coordination of Services** Attorneys shall consult with the District through County Counsel concerning all substantive positions and procedural steps to be taken by Attorneys in the course of advice and representation pursuant to this Agreement.
4. **Billing**. Attorneys shall submit monthly statements to County Counsel for fees and costs for services performed under this Agreement and District shall pay its obligations to Attorneys within a reasonable time after receipt of billings. Such monthly statements shall indicate the services performed, the person(s) performing the services and provide an accounting of work time spent for which payment is requested under this Agreement. Fees will be charged in one-quarter hour increments.
5. **Termination**. Attorneys and District reserve the right in their discretion to terminate this Agreement at any time Attorneys or District deem necessary or advisable upon fifteen (15) days written notice to the other party. Upon receipt of such notice of termination, Attorneys shall provide no further services to District without specific request or authorization of the County Counsel. Services of Attorneys hereunder shall not be deemed terminated until Attorneys have had an opportunity to, and upon receipt of such notice of termination Attorneys are hereby authorized to, obtain leave of court to withdraw from any court proceeding concerning which Attorneys are attorney of record for District. In the event of termination of this Agreement Attorneys shall immediately provide District with all materials, documents and work product related to services performed under this Agreement.
6. **No Assignment**. The experience, skill and expertise of Attorneys are of the essence to this Agreement. Attorneys shall not assign (whether by assignment or novation) this Agreement or delegate their duties hereunder in whole or in part or any right of interest hereunder without the prior written consent of District.
7. **Amendment**. This Agreement may be amended or modified only by written agreement signed by each of the parties, and a failure on the part of either party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or provisions.
8. **Prior Approval**. Unless otherwise instructed, Attorneys must obtain the approval of County Counsel concerning the following:
  - a. Retention of any consultant or expert witness to assist with this matter;
  - b. Making any settlement proposal on District's behalf;
  - c. Filing any action, response or motion;
  - d. Scheduling any deposition;
  - e. Undertaking research of more than twelve (12) hours on any particular issue; and,
  - f. Any expense item exceeding Five Hundred Dollars (\$500.00).
9. **Copies of Work Attorneys Will Provide to District**. Attorneys must provide County Counsel with copies of all:
  - a. Pleadings and legal memoranda prepared in connection with any District matter hereunder;
  - b. Court rulings; and,

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c. Significant correspondence related to any District matter hereunder.

10. **District's Legal Billing Review.** District shall have the right to review all billing statements prior to payment to Attorneys. This review may include, but not be limited to:

- a. The determination that the hourly fee charged is consistent with this Agreement's approved hourly rate schedule;
- b. The determination that the multiplication of the hours billed times the approved rate schedule dollars is correct;
- c. The determination that the bill is clearly divided into billing rate categories based on hours worked on each activity for each day by each attorney and costs which Consultants have advanced to s and experts, depositions, transcript expenses, and other chargeable expenses; and,
- d. The determination that each item charged is the usual, customary, and reasonable charge for the particular item. If District determines an item charged is greater than usual, customary, or reasonable, or is duplicative, ambiguous, excessive, or inappropriate, District shall either return the bill to Attorneys with a request for explanation or adjust the payment accordingly, and give notice to Attorneys of the adjustment.

11. **Expenses**

**Reimbursable ordinary expenses** shall include, but not be limited to:

- a. Deposition fees;
- b. Transcript fees;
- c. Long distance telephone charges;
- d. Travel costs;
- e. Process service;
- f. Westlaw or Lexis online charges for case research; and,
- g. Postage, faxes and photocopying.

**Reimbursable extraordinary expenses** shall include charges for which Attorneys have obtained District's prior approval. Such expenses shall include, but not be limited to:

- a. Consultants;
- b. Expert witnesses;
- c. Investigative services; and,
- d. Any expense item exceeding Five Hundred Dollars (\$500.00).

**Non-reimbursable expenses** shall include, but not be limited to:

- a. Rent, utilities, word processing, in-house courier, local telephone charges, office supplies, support staff and local area travel and meal expenses,
- b. Charges for time spent to provide necessary information for District audits or billing inquiries; and,
- c. Charges for work performed which had not been authorized by District. Such work shall be a gratuitous effort by Attorneys.

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12. **County Counsel's Authority.** The County Counsel shall have the authority to exercise District's rights and authority under this Agreement.

13. **Notices** All notices herein required shall be in writing, and delivered in person or sent by certified mail, postage prepaid, addressed as follows:

Alan K. Marks  
County Counsel  
County Government Center  
385 North Arrowhead Avenue  
San Bernardino, California 92415-0140

Thomas F. Winfield III  
BROWN WINFIELD & CANZONERI  
300 South Grand Avenue  
Los Angeles, CA 90071-3125

or at such other address or to such other persons as either of the parties may from time to time designate by written notice given as herein provided. Notice given by mail as required above shall be deemed delivered three (3) District business days after mailing.

14. **Conflicts** Attorneys shall disclose any conflict circumstance to District and obtain any needed approval or waiver by District and its officers. Any document evidencing such disclosure and any document evidencing such approval or waiver shall be deemed to be a part of this Agreement.

15. **Hold Harmless and Insurance.**

A. **Indemnification** - Attorneys agree to indemnify, defend with counsel approved by District and **the County of San Bernardino (County)** and hold harmless the District and County and their authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of this Agreement from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the District on account of any claim therefor, except where such indemnification is prohibited by law.

B. **Insurance** - Without in anyway affecting the indemnity herein provided and in addition thereto, Attorneys shall secure and maintain throughout the Agreement the following types of insurance with limits as shown.

(1) **Workers' Compensation** - A program of Workers' Compensation insurance or a state-approved Self-Insurance Program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons providing services on behalf of that party and all risks to such persons under this contract.

(2) **Comprehensive General and Automobile Liability Insurance** - This coverage to include contractual coverage and automobile liability coverage for owned, hired and non-owned vehicles. The policy shall have combined single limits for bodily injury and property damage of not less than one million dollars (\$1,000,000).

(3) **Errors and Omissions Liability Insurance** - Combined single limits of \$1,000,000 for bodily injury and property damage and \$3,000,000 in the aggregate or

(4) **Professional Liability** - Professional liability insurance with limits of at least \$1,000,000 per claim or occurrence.

C. **Additional Named Insured** - All policies, except for the Workers' Compensation, District Errors and Omissions and Professional Liability policies, shall contain additional endorsements naming the District and its officers,

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employees, agents and volunteers as additional named insureds with respect to liabilities arising out of the performance of services hereunder.

D. Waiver of Subrogation Rights - Attorneys shall require the carriers of the above required coverages to waive all rights of subrogation against the District, its officers, employees, agents, volunteers, contractors and subcontractors.

E. Policies Primary and Non-Contributory - All policies, except for the Workers' Compensation, required above are to be primary and noncontributory with any insurance or self-insurance programs carried or administered by the County.

F. Proof of Coverage - Attorneys shall immediately furnish certificates of insurance to the District evidencing the insurance coverage, including endorsements, above required prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department, and Attorneys shall maintain such insurance from the time Attorneys commence performance of services hereunder until the completion of such services. Within sixty (60) days of the commencement of this contract, the Attorneys shall furnish certified copies of the policies and all endorsements.

G. Insurance Review - The above insurance requirements are subject to periodic review by the District. The District's Risk Manager is authorized, but not required, to reduce or waive any of the above insurance requirements whenever the Risk Manager determines that any of the above insurance is not available, is unreasonably priced, or is not needed to protect the interests of the District. In addition, if the Risk Manager determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Risk Manager is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against the District, inflation, or any other item reasonably related to the District's risk. Any such reduction or waiver for the entire term of this Agreement and any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Agreement. Attorneys agree to execute any such amendment within thirty (30) days of receipt.

H. Failure to Have Insurance - In the event District receives a notice of cancellation concerning any of the required policies, or should fail to have in effect the required coverage at any time during this Agreement, District may give notice to Attorneys to immediately suspend all activities and/or notice to reinstate or acquire the affected coverage. Should Attorneys fail to reinstate or acquire the affected coverage within ten (10) days of District's notice to reinstate or acquire such coverage, District may either terminate this Agreement, reinstate or acquire the affected coverage, and Attorneys shall reimburse District for the necessary cost at District's option. If Attorneys do not reimburse District within ten (10) days after demand by District, District shall have the right to withhold from future amounts due under this Agreement or otherwise due to Attorneys the sum District has expended until District is reimbursed in full.

16. **Arbitration.** Arbitration shall be limited to any controversy or claim between the parties concerning Attorneys' billing for professional fees and costs, and shall be arbitrated before the Arbitration Committee of the Los Angeles County Bar Association pursuant to the Rules for Conduct of Arbitration of Fee Disputes and Other Related Matters. Judgment upon the arbitrator's award may be entered in any court having jurisdiction thereof. Such arbitration award will be final and binding upon the parties hereto.
17. **Fees and Costs.** If any arbitration or legal action is instituted to enforce or declare any party's rights hereunder, each party, regardless of which party is the prevailing party, must bear its own costs and attorneys' fees. This paragraph shall not apply to those costs and attorneys' fees directly arising from any third party legal action against a party hereto and payable under paragraph 15, **Hold Harmless and Insurance.**
18. **Jury Trial Waiver.** Attorneys and District hereby waive their respective right to trial by jury and agree to accept trial by judge alone for any cause of action, claim, counterclaim or cross-complaint in any action, proceeding and/or hearing brought by either Attorneys against District or District against Attorneys on any matter whatsoever arising out of, or in any

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way connected with, this Agreement, the relationship of Attorneys and District, Attorney's or work performance hereunder, or any claim of injury or damage, or the enforcement of any remedy under any law, statute, or regulation, emergency or otherwise, now or hereafter in effect.

19. **Venue.** The parties acknowledge and agree that this Agreement was entered into and intended to be performed in whole or substantial part in San Bernardino County, California. Notwithstanding this, the parties agree that the venue for any action or claim brought by any party to this Agreement will be the Riverside County. Each party hereby waives any law or rule of court which would allow them to request or demand a change of venue.

20. **FORMER DISTRICT AND COUNTY OFFICIALS:**

a. Attorneys agree to provide or has already provided information on former District and County administrative officials (as defined below) who are employed by or represent Attorneys. The information provided includes a list of former District and County administrative officials who terminated District and County employment within the last five years and who are now officers, principals, partners, associates or members of the business. The information also includes the employment with or representation of Attorneys. For purposes of this provision, "District and County administrative official" is defined as a member of the Board of Supervisors or such officer's staff, County Administrative Officer or member of such officer's staff, County department or group head, assistant department or group head, or any employee in the Exempt Group, Management Unit or Safety Management Unit.

b. If during the course of the administration of this Agreement, the District determines that the Attorneys has made a material misstatement or misrepresentation or that materially inaccurate information has been provided to the District, this Agreement may be immediately terminated. If this Agreement is terminated according to this provision, the District is entitled to pursue any available legal remedies.

21. **Agreement.** The above terms and conditions constitute the complete agreement between the parties hereto.

SAN BERNARDINO COUNTY  
FLOOD CONTROL DISTRICT

►  
Dennis Hansberger, Chairman, Board of Supervisors

Dated: \_\_\_\_\_

SIGNED AND CERTIFIED THAT A COPY OF THIS  
DOCUMENT HAS BEEN DELIVERED TO THE  
CHAIRMAN OF THE BOARD

Clerk of the Board of Supervisors  
of the County of San Bernardino.

By \_\_\_\_\_  
Deputy

BROWN WINFIELD & CANZONERI  
(Print or type name of corporation, company, contractor, etc.)

By ►  
(Authorized signature - sign in blue ink)

Name \_\_\_\_\_  
(Print or type name of person signing contract)

Title \_\_\_\_\_  
(Print or Type)

Dated: \_\_\_\_\_

Address \_\_\_\_\_

Approved as to Legal Form

►  
County Counsel

Date \_\_\_\_\_

Reviewed by Contract Compliance

►  
\_\_\_\_\_

Date \_\_\_\_\_

Presented to BOS for Signature

►  
Department Head

Date \_\_\_\_\_

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